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Supreme Court of the United States

OCTOBER TERM [redacted] 1962

No. [redacted] 87

LOCAL NO. 438 CONSTRUCTION & GENERAL LABORERS' UNION AFL-CIO, PETITIONER,

vs.

S. J. CURRY, ET AL., ETC.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF GEORGIA

PETITION FOR CERTIORARI FILED APRIL 3, 1962
CERTIORARI GRANTED MAY 21, 1962

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

No. 839

LOCAL NO. 438 CONSTRUCTION & GENERAL LABORERS' UNION AFL-CIO, PETITIONER,

vs.

S. J. CURRY, ET AL., ETC.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF GEORGIA

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[fol. 1]

IN THE SUPERIOR COURT OF FULTON COUNTY, GEORGIA

No. A-88617

Suit for Injunction

S. J. Curry, C. D. McKnight, Jr., E. G. Hightower and J. E. Tappan, doing business as S. J. Curry and Company, a partnership,

vs.

Construction and General Laborers Union, Local No. 438, AFL-CIO.

Bill of Exceptions—October 10, 1961

To the Supreme Court of Georgia:

Be It Remembered that on the 24th day of August, 1961 there was filed in the Superior Court of Fulton County the case of S. J. Curry, C. D. McKnight, Jr., E. G. Hightower and J. E. Tappan, doing business as S. J. Curry & Company, a partnership, as Plaintiff, against Construction and General Laborers Union, Local No. 438, AFL-CIO, an unincorporated association within the meaning of Title Three, Section 118, of the Code of Georgia Annotated, 1960 Supplement, as Defendant, being Case No. A-88617 in said Court; the same being an equitable petition seeking a temporary and permanent injunction against the defendant for alleged violation of Sections 54-804, 54-805 and 66-9906 of the Annotated Code of Georgia, 1933, it being alleged therein in substance that the petitioners were engaged in the business of a general contractor within the State of Georgia and had entered into a contract with the City of Atlanta for the construction of certain additions and improvements to sewage disposal facilities located at the South River Sewage Treatment Plant in the City of Atlanta; that in carrying out their contract with the City of Atlanta they engaged the services of various members of

the building and construction crafts and that they operated what is known as an "Open Shop" as required by the laws of the State of Georgia, that is, that membership in a labor [fol. 2] organization was not required as a condition of employment; that on or about August 10, 1961 the defendant caused a picket to appear in front of petitioners' construction project carrying a picket sign or placard bearing a legend that in substance said that petitioners had violated their contract with the City of Atlanta by failing to pay wages conforming with those of a similar type of work in the Atlanta area; that the presence of said picket immediately created a job disruption by causing employees of other contractors working on the same project to leave the job site and by preventing the delivery of supplies and materials to the job site and that these conditions had effectively deprived the petitioners from lawfully engaging or continuing to engage in the proper and lawful pursuit of their business and had also deprived many of petitioners' employees of the right to work; that the petitioners had no labor dispute of any kind with any of their employees or with any labor organization representing their employees, but notwithstanding this the presence of the picket placed on the job site by defendant was effectively interfering with the petitioners' contract with the City of Atlanta so as to make performance of this contract impossible, causing the petitioners to suffer irreparable and incalculable injury or damage. The petition contained prayers seeking injunctive relief restraining the defendant from picketing or causing the picketing of the construction job of the petitioners and from taking any action which would directly or indirectly cause a job stoppage or disruption and to restrain the defendant from interfering with the rights of the petitioners' employees to work.

Be It Further Remembered that pursuant to a show cause order signed in said case, the matter came on for interlocutory hearing before the Honorable Ralph Pharr, Judge of the Superior Court of Fulton County, on the 12th day of September, 1961. At said hearing the plaintiffs [fol. 3] introduced into evidence their sworn petition and also introduced the affidavits of S. J. Curry (identified and

attached hereto as Exhibit "A" and made a part of this Bill of Exceptions), B. L. Humphreys (identified and attached hereto as Exhibit "B" and made a part of this Bill of Exceptions), W. R. Griffin (identified and attached hereto as Exhibit "C" and made a part of this Bill of Exceptions), and George C. Rowland (identified and attached hereto as Exhibit "D" and made a part of this Bill of Exceptions). The defendant introduced into evidence the affidavits of James Moore (identified and attached hereto as Exhibit "E" and made a part of this Bill of Exceptions), William Wilson, (identified and attached hereto as Exhibit "F" and made a part of this Bill of Exceptions), P. D. Christian (identified and attached hereto as Exhibit "G" and made a part of this Bill of Exceptions), James H. Kaminer (identified and attached hereto as Exhibit "H" and made a part of this Bill of Exceptions), William Owen Thomas (identified and attached hereto as Exhibit "I" and made a part of this Bill of Exceptions) and Kenneth E. Goodwin (identified and attached hereto as Exhibit "J" and made a part of this Bill of Exceptions).

Be It Further Remembered that after the introduction of the foregoing evidence the Honorable Ralph Pharr announced that he would like to question James Moore (whose affidavit had been introduced into evidence by the Court as aforesaid) and thereupon James Moore was sworn and testified substantially as follows:

> Mr. Moore testified that in his capacity as President of the Atlanta Building Trades Council he acted merely as a representative of that organization at a meeting on February 14th at the construction site of the South River Sewage Treatment Plant with Mr. S. J. Curry, of S. J. Curry & Company, in Atlanta, Georgia. He stated that his only purpose at the meet- [fol. 4] ing was to introduce the various business agents of the member unions of the Atlanta Building Trades Council to Mr. Curry. He stated that he had no further conversations with Mr. Curry beyond these introductions but that he did recall hearing several of the business agents request of Mr. Curry to raise the wage level on the South River Sewage Treatment

Plant so the wages would meet the prevailing wages in the Atlanta area. Mr. Moore testified that he could not hear all of the conversation and other than the wage question he did not know what was said at the conference. Mr. Moore testified that he had not made any demands on Mr. Curry in regard to using union labor on this job and as far as he knew no such demands were made. Mr. Moore further stated that he had had no further conferences with Mr. Curry since February 14, 1961 until a meeting of Public Works Committee #2 of the City of Atlanta in the City Hall of the City of Atlanta at which time he saw Mr. Curry again but, of course, had no conference with him. Mr. Moore further testified that after the conference on the job site of February 14th he had gone to the City Attorney of Atlanta, Mr. Jack Savage, in an effort to bring about some correction of the wage condition on the Curry job. He stated that thereafter Mr. Savage wrote a letter to Mr. Ray Nixon as Chief of Construction for the City of Atlanta advising him of the wage situation.

Mr. Moore was then examined by counsel for petitioners and testified in substance that he did not know what transpired at the meeting of February 14th other than a request of several business agents upon Mr. Curry to pay the prevailing wage on his job. He stated [fol. 5] that he recalls Mr. Curry did say that he was unable to pay the prevailing wage because he had gotten the job at such a low bid and that he could just not afford to pay a higher wage.

Thereupon counsel for the defendant questioned the witness, James Moore, and he further testified that as a result of his contact with the City Attorney a letter was sent to the Chief of Construction for the City of Atlanta. Mr. Moore testified that as a result of this letter a meeting was held by Public Works Committee #2, composed of Aldermen of the City of Atlanta, in an effort to determine whether there had been any contract violation by Curry with the City of Atlanta. Mr. Moore stated that this meeting was held as a result of his efforts through the City Attorney and that he had pushed this meeting to try to correct a wage situa-

tion that he felt was detrimental to the welfare of workers and craftsmen in the Atlanta area.

Be It Further Remembered that after introduction of the foregoing evidence and after hearing argument of counsel, the Honorable Ralph Pharr entered an order denying the temporary injunction sought by the plaintiffs.

To said ruling and judgment of the Court the plaintiffs excepted, now accepts and assigns the same as error upon the ground that the ruling is contrary to law in that the evidence demanded a finding that the conduct of the defendant had effectively interfered with the proper, lawful or peaceful use of enjoyment of plaintiffs' property and the carrying out of their business on a construction project located in Fulton County, Georgia, as set forth in plaintiffs' petition and further demanded a finding that the [fol. 6] conduct of the defendant actively interfered with the pursuit of the lawful enjoyment of petitioners' employees and further that the conduct of the defendant created conditions so that carriers and suppliers had effectively been prevented from delivering or supplying materials to the construction site of the petitioners, all of which acts were a clear violation of what is commonly known as the right to work statutes of the State of Georgia, as set out in Sections 54-804, 54-805 and 66-9906 of the Annotated Code of Georgia, 1933, and this is true, irrespective of whether the facts contained on the picket sign of defendant were correct or incorrect as such facts are completely irrelevant to the question of whether or not the defendant had violated the foregoing statutes; and for said reasons the plaintiffs were entitled as a matter of law to an injunction enjoining the defendant from such unlawful conduct.

Be It Further Remembered that the order and judgment entered in said case on September 12, 1961 denying the temporary injunction sought under the petition is a final order subject to review by this Court.

S. J. Curry, C. D. McKnight, Jr., E. G. Hightower and J. E. Tappan, doing business as S. J. Curry & Company, a partnership, name themselves as Plaintiffs in Error, and Construction and General Laborers Union, Local No. 438,

AFL-CIO, as Defendant in Error in this Bill of Exceptions and hereby assigns error on the judgment and order of the Court in refusing to grant the temporary injunction prayed for and says that the Court erred in said order on the ground that the same was contrary to law for the reasons above set out and that the Court should be overruled and reversed.

The Plaintiffs in Error specify, as material to a clear understanding of the errors complained of, the following parts of the record:

(1) The original petition filed on August 24, 1961 together with a show cause order thereon but omitting the acknowledgment of service by the defendant; and

[fol. 7] (2) The order of the Court denying an interlocutory injunction entered and filed on September 12, 1961.

Be it further remembered that at the conclusion of the aforementioned interlocutory hearing, it was agreed and stipulated between the parties, through counsel, that the petitioners had purchased more than $50,000.00 worth of goods and commodities from out of the State of Georgia which had been shipped to petitioners' construction project at the South River Sewage Treatment Plant. It was further stipulated and agreed, without in any way waiving the question of relevancy, that the following language was contained in the contract existing between the City of Atlanta and the petitioners, as referred to in the petition:

"Wages will conform with those being paid on similar types of work in the Atlanta area."

And Now Comes S. J. Curry, C. D. McKnight, Jr., E. G. Hightower and J. E. Tappan, doing business as S. J. Curry & Company, a partnership, within the time provided by law and assigns error on the grounds complained of as contrary to law, and tenders this their Bill of Exceptions, and prays that the same be certified and transmitted to the Supreme Court of Georgia in order that the alleged errors may be considered and corrected, all as provided by law. The Supreme Court of Georgia having jurisdiction for the reason that exclusive jurisdiction of this case has been

conferred upon said Court by the Constitution of Georgia, this being a suit in equity seeking equitable relief.

This the 10th day of October, 1961.

Perry, Walters & Langstaff, By Robert B. Langstaff, Attorneys for Plaintiffs in Error.

Notice of presenting Bill of Exceptions as required by Section 6-908.1 of the Code is hereby waived.

This the day of October, 1961.

John S. Patton, Attorney for Defendant in Error.

[fol. 8]

EXHIBIT A TO BILL OF EXCEPTIONS.

STATE OF GEORGIA
FULTON COUNTY

S. J. CURRY & COMPANY, a partnership composed of S. J. CURRY, C. D. McKNIGHT, JR., E. G. HIGHTOWER and J. E. TAPPAN

vs.

LOCAL #438 of the CONSTRUCTION AND GENERAL LABORERS UNION—AFL CIO

AFFIDAVIT OF S. J. CURRY

I, S. J. Curry, a partner of S. J. Curry & Company, a partnership composed of myself, C. D. McKnight, Jr., E. G. Hightower, and J. E. Tappan, first being duly sworn make this affidavit for use in the above stated matter. S. J. Curry & Company is engaged in the business of general contractor within the State of Georgia and performs various kinds of construction work throughout the State. On November 15, 1960, the partnership entered into a contract with the City of Atlanta for construction of certain additions and improvements to the Sewage Disposal facilities located at the South River Sewage Treatment Plant in the City of Atlanta. Under the terms of this contract, the

partnership was to undertake the construction of certain designated improvements and additions to the existing sewage disposal plant and under the terms of our contract, we were to complete the contract within 540 consecutive days from December 5, 1960.

In undertaking the construction and completion of the improvements and additions contemplated under our contract, we have engaged the services of varying numbers of workmen engaged in the building and construction crafts, such as carpenters, iron workers, brick masons, common laborers, cement finishers and the like. We operate what is known as an "Open Shop" and to this extent we make absolutely no discrimination as to whether any prospective employee is or is not a member of any labor organization. [fol. 9] The nature of our contract with the City of Atlanta at the South River Sewage Treatment Plant requires that we work closely and directly with other contractors on the same job who have been given or awarded the electrical and plumbing work connected with the project. The electrical work on this job has been contracted to G. L. Gerlach Electric Company, of Fulton County, Georgia, by the City of Atlanta and all plumbing work has been contracted by the City of Atlanta to Gowdy and Durken, Inc., of Fulton County, Georgia. We have absolutely no contract or supervision of these contractors as their contracts are directly with the City of Atlanta.

As previously stated, our work on this job has been conducted on an Open Shop basis and we have no contracts with any labor organizations in regard to any of our employees on this job. Shortly after we had started construction on this job and around the 1st of January, 1961, I received word from my Job Superintendent, Mr. B. L. Humphreys, Jr. that he had been visited at the job site by representatives of various local unions in the Atlanta area. These representatives wanted to arrange a conference with me and pursuant to this request and on or about February 14, 1961, I came to Atlanta, Georgia, to meet with representatives of various unions in this area, including a representative of the Construction and General Laborers Union, Local #438. This meeting was held in the Field Office of my company at the aforementioned job site and there were

some 15 to 18 business agents and representatives of various unions present at this meeting. In addition, there was a representative of the Building Trades Council of Atlanta, who I remember to be a Mr. Moore and he appeared to be spokesman for the group.

Mr. Moore told me they were interested in having our company work unions members on our project. He stated that there were several other projects in the Atlanta area involving sewage plant construction on which workmen [fol. 10] were being furnished through the local labor unions. He stated that the local unions had ample labor supply and would like very much to furnish their members on our work. There was some discussion by other representatives present and when this was concluded, I advised Mr. Moore and those present that we would not be able to work union members exclusively since we operated our business on an Open Shop basis. At this point I was told by Mr. Moore and other representatives of the unions that they would use every means at their command to see that we did use union workmen on our project. I told them that this was their prerogative and at that point, the meeting was dismissed. Thereafter I had no further contact with any member of this group or any union represented by the group until on or about August 10, 1961, when the Construction and General Laborers Union, Local #438, placed a picket at the main entrance of our job site at the South River Sewage Treatment Plant. Since August 10, 1961, a single picket has patrolled or picketed the main entrance of our job by walking up and down carrying a placard sign which bears the following legend:

> "S. J. Curry & Company, Inc. violating contract with City of Atlanta by not paying wages conforming with those of a similar type of work in the Atlanta area. CONSTRUCTION AND GENERAL LABORERS UNION 438 AFL CIO."

Since the picket was established, all employees of the G. L. Gerlach Electric Company and Gowdy and Durken, Inc. walked off the construction site and have refused and continue to refuse to work. At the time the picket was

first established we had employed approximately 72 men and as previously stated, we had no labor disputes with any of these men nor any labor organization, and according to the best of my knowledge, no labor union represented these men. Since the picket was established we immediately began having difficulty receiving materials and supplies be- [fol. 11] cause of the refusal and failure of truck drivers to cross the established picket line. The absence of the other contractors' employees from the job, coupled with the refusal of truck drivers to deliver supplies and materials created a situation in which we were compelled to discharge or lay off employees who were otherwise willing to work. At the time of making this affidavit, our work force has dropped to 37 employees and will continue to drop until the job reaches a complete standstill.

As a direct result of the picket line, we have been effectively deprived of much of the use of the machinery and equipment we have on this job site because of the curtailment of the work. In addition we have had to discharge valuable employees who will become scattered and perhaps non-available if and when we can return to work on a full time basis.

The presence of the picket line established by the Construction and General Laborers Union #438 has effectively interfered with our contract with the City of Atlanta in that we will be unable to complete the work contemplated under this contract within 540 consecutive calendar days allowed. The contract carries a penalty clause of $50.00 a day for every day in excess of 540 days it requires to complete the work. Over and above the actual contract penalty clause, my company will suffer considerable loss, which it is impossible to estimate, by continued overhead and operating costs, notwithstanding the fact that we are unable to perform, plus the loss from idle machinery and equipment, the necessity of warehousing goods, and the loss of a previously well organized working force.

Neither I nor any member of my company have received any subsequent calls or requests for conferences from either the Construction and General Laborers Union, Local 438, or any member of the Building Trades Council of Atlanta. We received absolutely no notice of the picket

other than its presence on the morning of August 10, 1961. [fol. 12] From my 30 years experience in the construction business and from the experiences I have had with labor disputes, strikes, and picketing I can definitely state that the placing of a picket in front of a construction site such as ours at South River Treatment Plant is a commonly accepted and established sign or signal used by craft unions to designate a particular job "On Strike", so that all employees on that particular job will refrain from working.

This 11th day of September, 1961.

/s/ S. J. Curry
S. J. Curry

Sworn to and subscribed before me this
11th day of September, 1961.

/s/ Mrs. Brandon Gamble
Notary Public, Fulton County, Georgia

[fol. 13]

Exhibit B to Bill of Exceptions

No. A-88617

Fulton Superior Court

S. J. Curry & Co., a partnership composed of S. J. Curry, C. D. McKnight, Jr., E. G. Hightower, and J. E. Tappan,

Plaintiffs,

vs.

Local No. 438 of the Construction and General Laborers Union AFL CIO,

Defendant.

State of Georgia,
County of Fulton:

Affidavit of B. L. Humphreys, Jr.

B. L. Humphreys, Jr., of DeKalb County, Georgia, having first been duly sworn, deposes and says:

I am superintendent for S. J. Curry & Company on the construction project presently under construction at the South River Sewage Treatment Plant in the City of Atlanta. I have been employed by S. J. Curry & Company in my capacity as job superintendent for about four years, and I worked with them prior to that time for an additional seven years.

On or about December 5th, 1960, the improvement and additions to the South River Sewage Treatment Plant that had been contracted for by S. J. Curry & Company with the City of Atlanta were assigned to me as job superintendent, and I came to Atlanta on or about that date for the purpose of instituting construction.

I was in charge of all employment for this job and it was my responsibility to see that necessary workmen were hired to satisfactorily complete the job. This job has been an open shop job from the beginning and no effort was made to require union membership as a condition of em- [fol. 14] ployment. By "open shop" I mean that we did not require union membership as a condition of employment, but rather we hired all crafts and common laborers needed on the job without regard to any union affiliation.

Shortly after the first of the year, 1961, and in the early part of January I was contacted on the job site by several representatives of various trade unions in regard to using union workmen on this particular job. I told these individuals that I had no authority to speak for the company, but that I would arrange a conference between them and Mr. S. J. Curry, who is senior partner of S. J. Curry & Company.

14th B.L.H.

Thereafter, and on or about February ~~12~~th, 1961, I arranged a conference on the job site between Mr. Curry and the representatives of the various unions comprising the Atlanta Trades Council. I attended this meeting although the company's position was handled by Mr. Curry himself. As I recall, the general gist of the conversation was that the representatives of the various unions present and the representative of the Atlanta Trades Council wanted S. J. Curry & Company to use union workmen on this particular job, and after some discussion Mr. Curry told them that he

did not see where he could go along with them and at this time the meeting broke up, after the spokesman for the group stated that they would use every means at their disposal to see that we did use union men on this job.

Thereafter I had no additional contacts, meetings or conferences with any labor organizations or representatives of labor organizations, except that I do recall two business agents did come to the job and inquire in regard [fol. 15] to the status of certain of my subcontractors.

On or about August 10th, 1961, and in the early morning a picket was placed on my job by the Construction and General Laborers Union Local No. 438. As I recall, the picket was placed there shortly after eight o'clock and thereafter the electricians and plumbers who were working for other contractors on the same job site left the job and have not returned since that date, up to and including the present time. The electricians and plumbers work for other contractors who had contracts directly with the City of Atlanta for the electrical and plumbing work on this job. I had no control over these employees and no supervision over them.

The picket line consisted of a single picket walking up and down in front of the main entrance to this job, carrying a sign or placard which bore the following legend: "S. J. Curry & Company, Inc., violating contract with City of Atlanta by not paying wages conforming with those of a similar type of work in the Atlanta area. Construction and General Laborers Union, 438, AFL CIO" This picket came to the job each morning, and still does, around seven-thirty and stays on the job until we knock off or stop work around three-thirty. The picket has been there continually since August 10th on working days.

When the picket line was established on August 10th, I immediately had some difficulty with delivery of supplies and material to this job. In particular, a load of cast iron pipe from American Cast Iron Pipe Company from Birmingham, Alabama, was not delivered to the job site because of the refusal of the driver of the truck to cross the picket line. The pipe was unloaded outside of the gate and [fol. 16] I was required to use my own men to transport the pipe onto the job proper. On another occasion a load

of concrete from MacDougald-Warren Concrete Company in Atlanta was ordered for the job, but the driver refused to cross the picket line and the concrete was not delivered. As I recall, this attempted concrete delivery was on or about August 21st, 1961. There have been several other instances in which drivers have refused to cross this picket line, and I have been unable to get materials and supplies needed on the job site.

Due to the nature of the work on this construction project and the fact that our work progresses with the work of the electricians and plumbers, this absence of the electricians and plumbers from the job caused an immediate and serious interruption in the progress of the job. Because the electricians were not available to lay conduit, and the plumbers to lay pipe, I was compelled to stop the forming on concrete walls and the pouring of concrete walls and slabs connected with this particular type construction. As a direct result of this curtailment of work, I have had to reduce my work force from seventy-two on August 10th to about thirty-seven as of the date of this affidavit. All of the men that I have laid off or discharged were ready and able and willing to continue their work, but because of the lack of work I was simply unable to continue their employment. As far as I know, none of these men are members of any labor organization. Since August 10th, 1961, the work which was contracted by S. J. Curry & Company has steadily decreased and I have had a considerable amount of machinery and equipment left idle and unused because of the job interruption. In addition to idle equipment, I have had to [fol. 17] store and warehouse goods and material on the job site which ordinarily would have already been installed, and as previously mentioned, I have lost an otherwse well-organized working force. In addition, a large amount of form work for concrete floor slabs has deteriorated considerably due to the lengthy exposure to the elements. In order to recondition forms that I have already constructed so that concrete can be poured, it will be necessary to go back and rework these forms and at considerable additional expense and cost. As previously stated, our contract calls for construction of these forms, but we are unable to complete the pouring of the forms and the formation of slabs

until the electrical conduit and plumbing connections are inserted in the forms.

There is absolutely no labor dispute existing between the company and any of my employees, and all of them stand ready and willing to work.

/s/ B. L. Humphreys, Jr.
B. L. Humphreys, Jr.

Sworn to and subscribed before me,
this 12th day of September, 1961.

/s/ Mitchell M. Shugart
Notary Public

My Commission Expires: July 26, 1963

[fol. 18]

Exhibit C to Bill of Exceptions

Georgia, State of
Fulton County

S. J. Curry & Company, a partnership composed of S. J. Curry, C. D. McKnight, Jr., E. G. Hightower and J. E. Tappan

vs.

Local #438 of the Construction and General Laborers Union—AFL CIO

Affidavit of W. R. Griffin

I, W. R. Griffin, of Carroll County, Georgia, having first been duly sworn deposes and says that I am a carpenter by trade and have been so engaged for the past twenty years. On or about the middle of January, 1961 I was employed by S. J. Curry & Company to do carpentry work on the additions and improvements being constructed by this company at the South River Sewage Treatment Plant in the City of Atlanta. My employment at this job site with S. J.

Curry & Company continued relatively uninterrupted until about August 18, 1961 when I was laid off by the job superintendent, Mr. B. L. Humphreys, Jr. for lack of work. Mr. Humphreys explained to me at that time that the lack of work was caused by the presence of a picket line which had been established on the job on or about August 10th. I told Mr. Humphreys then that I was ready and willing to work and wanted to work but he told me that because the picket line had caused some of the electricians and plumbers to walk off the job that he just didn't have any work.

[fol. 19] I stayed off the job and did not work elsewhere until August 28 when I returned to work back at the job site and worked until September 1, 1961 when I was again laid off and I have not worked at this job site since or any where else. I am ready and able to return to work as a carpenter to the South River Sewage Treatment Plant for S. J. Curry & Company and would like to return there as soon as the work picks up. This the 11th day of September, 1961.

/s/ W. R. Griffin
W. R. Griffin

Sworn to and subscribed before me this the 11th day of September, 1961.

/s/ Anne Phillips
Anne Phillips, Notary Public, Georgia
State at Large
My Commission Expires Mar. 29, 1964

[fol. 20]

EXHIBIT D TO BILL OF EXCEPTIONS

GEORGIA, STATE OF
FULTON COUNTY

In re S. J. CURRY & COMPANY, a partnership composed of S. J. CURRY, C. D. MCKNIGHT, JR., E. G. HIGHTOWER and J. E. TAPPAN

vs.

LOCAL #438 of the CONSTRUCTION AND GENERAL LABORERS UNION—AFL CIO

AFFIDAVIT OF GEORGE C. ROWLAND

I, George C. Rowland, of Fulton County, Georgia, first being duly sworn deposes and says that I am employed by Mac-Dougald Warren, Inc. in the capacity of Plant Manager, at the concrete plant located at 3600 Browns Mill Road. I have occupied the position of Plant Manager for approximately five (5) years and in this capacity, I am responsible for the dispatching of all ready mixed concrete pursuant to orders that are received in this plant.

Prior to August 10, 1961, my company had been furnishing ready mixed concrete to S. J. Curry and Company at the South River Sewage Treatment Plant in the city. We have been supplying ready mixed concrete to this job site since it started. On or about August 10, 1961, I learned that a picket had been established at the entrance of this job site. Thereafter and specifically on August 21, 1961, Truck #16 driven by Harvey Lee Brumbelow was dispatched to said job site with one cubic yard of ready mixed concrete. The driver left the plant at approximately 12:38 P. M. but returned to the plant at 1:15 P. M. with the concrete undelivered. The driver called me from the job site and informed me that there was a picket on the job site and he could not deliver the concrete because it would require crossing the picket line. Accordingly, he returned to the

plant at approximately 1:15 P. M. on the same date, having failed to deliver the concrete.

This 11th day of September.

/s/ George C. Rowland
George C. Rowland

Sworn to and subscribed before me
this 11th day of September, 1961

/s/ Mrs. Brandon Gamble
Notary Public, Fulton County, Georgia

[fol. 21]

Exhibit E to Bill of Exceptions

Fulton Superior Court

Case No. A 88617

S. J. Curry & Company

vs.

Local No. 438 Construction & General Laborers Union, AFL-CIO

Affidavit of James Moore

State of Georgia,
County of Fulton.

I, James Moore, being first duly sworn, do solemnly make oath as follows:

My name is James Moore. I am Business Representative of the Atlanta Building Trades Council.

In my capacity as a representative of the Atlanta Building Trades Council I am familiar with the wages being paid in the Atlanta, Georgia, area to the various building trades crafts for construction of sewage disposal plants and similar construction. It is a part of my responsibility to have such knowledge and to work with the various building

trades unions in an attempt to maintain said standards in the Atlanta, Georgia, area.

I know of my personal knowledge that Arthur Pew Construction Company, Inc., of Atlanta, Georgia has engaged in the following construction in the Atlanta, Georgia, area subsequent to July, 1959; watermain construction at Atlanta, Georgia, on Bolton Road, watermain construction in DeKalb County, Georgia, watermain construction, Atlanta, Georgia, on Moores Mill Road, water treatment plant in Atlanta, Georgia, on Bolton Road, sewer line construction in DeKalb County, Georgia, on the South River and sewage treatment plant at Kennesaw, Georgia.

During said period all carpenters on said jobs were paid at the following rate: July 1, 1959, to January 1, 1960, $3.20; January 1, 1960, to July 1, 1960, $3.25; July 1, 1960, to the present $3.35.

[fol. 22] In the year 1960 G. E. Tillman Company, Inc., constructed a sewage treatment plant known as Sewage Treatment Plant Improvements Contract B, Atlanta, Georgia. In said construction the company employed six operating engineers who were paid $3.67½ per hour, four carpenters who were paid $3.35 an hour, ten iron workers who were paid $3.60 an hour, twelve plumbers and pipe fitters who were paid $3.85 an hour, and fifty laborers who were paid $2.00 an hour, and eight brickmasons who were paid $4.00 an hour.

A company known as Halpin, Inc., Avondale Estates, Georgia, engaged in construction of a sewage disposal plant in DeKalb County, Georgia, said construction being during the year 1960, and 1961 and on said job the following wages were paid: carpenters, $3.35 per hour; cement finishers, $3.30 an hour; operators $3.67½ per hour; oilers $2.57½ per hour; bricklayers, $4.00 an hour, laborers $2.00 per hour.

P. D. Christian Company, of Atlanta, Georgia, have since July 1, 1960, paid $3.35 to all carpenters; Gowdy & Durkin, Inc., is paying on the South River sewage treatment plant, Atlanta, Georgia, $4.00 per hour to plumbers and steam fitters; C. L. Gerlach Electric Company is paying to electricians, foremen $4.35 per hour, journeymen $4.00 an hour, apprentice third year $2.40 an hour; apprentice second six months $1.95 an hour.

The above wages conform to the wage scale as approved under the Davis-Bacon Act, of the U. S. Department of Labor.

There is a lower scale for road construction. This is because of the fact that practically all construction of roads is hidden work and does not call for anything like the same skills as does other construction. There is a great deal of construction above the ground in sewage disposal plants and the construction in sewage disposal plants calls for high skills unrelated to those in road construction, and road construction has never been a criteria as a wage scale for the wages to be paid on sewage disposal plants or related points.

[fol. 23] A contract was signed by the plaintiff in this cause and the City of Atlanta for construction work on the South River sewage disposal plant, which contract contained the following clause:

> "Wages will conform with those being paid on similar types of work in the Atlanta area."

Notwithstanding said contract with the City of Atlanta, I know of my own knowledge and know from statements made by officials of the plaintiff that S. J. Curry & Company has never paid the wages hereinabove set forth, which are prevailing wages in the Atlanta, Georgia, area for similar construction, during any of the time it has been engaged in the construction of the said sewage disposal plant for the City of Atlanta. In most instances the wages are only a little over half of the prevailing wage.

I have on repeated occasions on behalf of the Atlanta Building Trades Council attempted to persuade the plaintiff to comply with its contract with the City of Atlanta, which above clause having been placed in the contract for the benefit of the various crafts which are members of the Atlanta Building Trades Council, and the company has utterly and completely failed to live up to its contract. I have conferred with various officials of the City of Atlanta, including Mr. J. C. Savage, City Attorney of the City of Atlanta, and have at all times made plain to Mr. Savage that we were not complaining about the individuals being

employed and that were not in any way seeking to force the plaintiff in this cause to have only union labor or to discharge any employees so as to employ union labor, but that we were only insisting that the company fulfil its contractual obligations and that the City require the company to fulfil said obligations in that it pay the prevailing wage in the Atlanta area. On May 31, 1961, Mr. J. C. Savage, City Attorney, wrote a letter to Mr. Ray Nixon, Chief of Construction, said letter being written in his capacity as City Attorney.

[fol. 24] A hearing was held before the Board of Aldermen, and said Board did not make a determination that the plaintiff herein was paying the prevailing wage, but they reached the following conclusion:

> "After a lengthy discussion this matter was referred to executive session where the Committee agreed that there is nothing that the City can legally do so as to make Curry raise his pay scale."

Both jobs in the construction industry and more particularly jobs that are built by the City of Atlanta are given to contractors on competitive bids with the lowest bidder receiving the job. S. J. Curry & Company was enabled to be the lowest bidder in this cause by its determination that it would not live up to the terms of the contract which it executed with the City of Atlanta, and only by the payment of depressed wages which utterly destroy the wage structure in the Atlanta, Georgia, area. The effect of a failure to pay the prevailing wages by a contractor such as the plaintiff is that the company paying the depressed wages receive the job because they make the lowest bid, and those companies which desire to maintain the wage scale therefore are faced with the problem of either ceasing to remain in business because they will not successfully bid or of themselves paying lower wages so as to meet the competition. It is, therefore, utterly destructive to the wage structure in this area for a company such as plaintiff to pay less wages which are substantially less than the prevailing wage scale in the Atlanta, Georgia, area. This is a matter of the utmost concern to all of the building trades crafts.

There has been no attempt to my knowledge to require the plaintiff to in any way violate the State's Right to [fol. 25] Work Laws or any other statutes or laws of the State of Georgia, but the only attempt which has been made has been to require the plaintiff to live up to its contractual obligations with the City of Atlanta and to pay the prevailing wage as it had contracted to do.

Construction and General Laborers Local Union No. 438, as a result of the failure of its elected representatives, the City of Atlanta, to enforce the contractual provision placed in the contract for the benefit of the members of said union as well as the other building trades crafts and as citizens of the City of Atlanta determine to publicize the fact that said contract provision incorporated in the contract by its own elected representatives, the officials of the City of Atlanta, was not being enforced, and to publicize the fact that construction was being engaged in in violation of the contract with the City of Atlanta and to the detriment of the citizens of the City of Atlanta by the plaintiff in this cause through the payment by plaintiff in this cause of wages destructive of the wage structure in the Atlanta, Georgia, area. It was to publicize this fact and only to publicize this fact that the picket line was erected at the plaintiff's construction work of the South River Sewage Disposal Plant in the City of Atlanta, Georgia. The picketing has at all times been peaceful and has consisted merely the publicizing to the public of facts relating to the actions of the elected representatives of the public and of the people engaging in the picketing and to publicize the fact that jobs being paid for out of the tax money of those picketing and other citizens of the City of Atlanta was being done with the company depressing the wage structure and standard of living in the Atlanta, Georgia, area.

[fol. 26] The above statement is given for the purpose of being used as evidence in the above styled case.

/s/ J. O. Moore

Sworn to and subscribed before me
this 12 day of September, 1961.

/s/ Mary L. Lester
Notary Public

[fol. 27]

EXHIBIT F TO BILL OF EXCEPTIONS

FULTON SUPERIOR COURT

Case No. A-88617

S. J. CURRY & COMPANY

vs.

LOCAL NO. 438 CONSTRUCTION & GENERAL LABORERS UNION, AFL-CIO

AFFIDAVIT OF WILLIAM WILSON

STATE OF GEORGIA,
COUNTY OF FULTON.

I, WILLIAM WILSON, being first duly sworn, do solemnly make oath as follows:

My name is William Wilson. I am Business Agent of Construction & General Laborers Union No. 438. I am a member of the Atlanta Buildings Trades Council, and as such have knowledge not only as to the prevailing wage in the Atlanta, Georgia, area for construction and general laborers, but also for other crafts in the Atlanta Building Trades Council. As such I have personal knowledge of the following:

I know of my personal knowledge that Arthur Pew Construction Company, Inc., of Atlanta, Georgia, has engaged in the following construction in the Atlanta, Georgia, area subsequent to July, 1959: watermain construction at Atlanta, Georgia, on Bolton Road, watermain construction at Atlanta, Georgia, on Bolton Road, watermain construction in DeKalb County, Georgia, watermain construction, Atlanta, Georgia, on Moores Mill Road, water treatment plant in Atlanta, Georgia, on Bolton Road, sewer line construction in DeKalb County, Georgia, on the South River and sewage treatment plant at Kennesaw, Georgia.

During said period all carpenters on said jobs were paid at the following rate: July 1, 1959, to January 1, 1960, $3.20; January 1, 1960, to July 1, 1960, $3.25; July 1, 1960, to the present $3.35.

[fol. 28] In the year 1960 G. E. Tillman Company, Inc., constructed a sewage treatment plant known as Sewage Treatment Plant Improvements Contract B, Atlanta, Georgia. In said construction the company employed six operating engineers who were paid $3.67½ per hour, four carpenters who were paid $3.35 an hour, ten iron workers who were paid $3.60 an hour, twelve plumbers and pipe fitters who were paid $3.85 an hour, and fifty laborers who were paid $2.00 an hour, and eight brickmasons who were paid $4.00 an hour.

A company known as Halpin, Inc., Avondale Estates, Georgia, engaged in construction of a sewage disposal plant in DeKalb County, Georgia, said construction being during the year 1959, and on said job the following wages were paid: carpenters, $3.35 per hour; cement finishers, $3.30 an hour; operators $3.67½ per hour; oilers $2.57½ per hour, bricklayers $4.00 an hour, laborers $2.00 an hour.

P. D. Christian Company, of Atlanta, Georgia, have since July 1, 1960, paid $3.35 to all carpenters; Gowdy & Durkin, Inc., is paying on the South River Sewage treatment plant, Atlanta, Georgia $4.00 per hour to plumbers and steam fitters; C. L. Gerlach Electric Company is paying to electricians, foremen $4.35 per hour, journey men $4.00 an hour, apprentice third year $2.40 an hour; apprentice second six months $1.95 an hour.

The above wages conform to the wage scale as approved under the Davis-Baker Act.

The plaintiff in this cause executed a contract with the City of Atlanta for construction of the South River sewage disposal plant, which contract contained the following language:

> "Wages will conform with those being paid on similar types of work in the Atlanta area."

Notwithstanding said agreement which the plaintiff entered into with the City of Atlanta, the plaintiff has never paid the prevailing wage rates in the Atlanta, Georgia,

area, said rates being those hereinabove set out, but has [fol. 29] always paid substantially less than the wages prevailing in this area. We have made repeated attempts to prevail upon said company to pay the prevailing wage, but all to no avail. It has been our insistence that they pay the prevailing wage and not that they only employ union personnel, and we have not in anyway violated the State's Right to Work Laws or any other section of any of the statutes of the State of Georgia. The Construction and General Laborers Union has a substantial interest in whether or not the prevailing wage is paid in this area. The plaintiff was a low bidder on this job, and those companies that have paid the prevailing wage were unsuccessful in their bids because of the fact that they were maintaining the standard of living in the Atlanta, Georgia, area. This Albany, Georgia, company, by paying depressed wages, is putting the companies desiring to maintain the wage scale in this area in the unfortunate position of having to reduce their wage scale or else fail to secure the bids necessary to remain in business. As citizens of the City of Atlanta, we decided that we had a right and duty to inform the public of what our and their elected representatives were doing in that they were not enforcing provisions of their contract with the plaintiff, which provisions were placed in that contract for the benefit of the people whom we represent and which were placed in the contract to maintain the wage scale and the standard of living of the citizens of the City of Atlanta. We, therefore, have directed a peaceful picket line for the purpose of advertising the true facts of the situation.

The above statement is given for the purpose of being used as evidence in the above styled case.

/s/ William Wilson

Sworn to and subscribed before me,
this 11th day of September, 1961.

/s/ John S. Patton
Notary Public,

(Seal)

[fol. 30]

EXHIBIT G TO BILL OF EXCEPTIONS

IN THE SUPERIOR COURT OF FULTON COUNTY

Case No. A 88617

S. J. CURRY AND COMPANY, a Partnership Composed of S. J. CURRY, C. D. McKNIGHT, JR., E. G. HIGHTOWER and J. E. TAPPAN

vs.

LOCAL UNION #438, CONSTRUCTION AND GENERAL LABORER'S UNION, AFL-CIO

AFFIDAVIT OF P. D. CHRISTIAN, JR.

STATE OF
COUNTY OF

I, P. D. CHRISTIAN, JR., being first duly sworn, do solemnly make oath as follows:

My name is P. D. Christian, Jr. I am president of P. D. Christian Company with offices at 3130 Maple Drive, N. E., Atlanta 5, Georgia. In all of our construction work in this area we are paying journeyman carpenters at the rate of $3.35 per hour and have done so since July 1, 1960.

The above statement is given for the purpose of being used as evidence in the above styled case.

P. D. CHRISTIAN COMPANY

/s/ P. D. CHRISTIAN, JR.
P. D. Christian, Jr., President

Sworn to and subscribed before me
this 7 day of Sept. 1961.

Evelyn Titus, Notary Public

/s/ EVELYN TITUS
Evelyn Titus, Notary Public
My Commission Expires 8/1/64

[fol. 31]

EXHIBIT H TO BILL OF EXCEPTIONS

IN THE SUPERIOR COURT OF FULTON COUNTY

Case No. A-88617

S. J. CURRY AND COMPANY, a Partnership Composed of S. J. CURRY, C. D. McKNIGHT, JR., E. G. HIGHTOWER and J. E. TAPPAN

vs.

LOCAL UNION #438, CONSTRUCTION AND GENERAL LABORER'S UNION, AFL-CIO

AFFIDAVIT OF JAMES H. KAMINER

STATE OF
COUNTY

I, JAMES H. KAMINER, being first duly sworn, do solemnly make oath as follows:

I am associated in the construction business as an official thereof, of Kaminer Construction Corporation. On our construction contracts at Marietta, Cobb County, Georgia, between the periods indicated, this company paid the hourly carpenter rates shown below:

Job	*Period*	*Hourly Wage*
Lockheed Fueling Job Cobb County, Marietta	11/17/58 to 13/31/58	$3.05
Water Treatment Plant	7/25/57 to 6/18/58	2.95

The above statement is given for the purpose of being used as evidence in the above styled case.

/s/ JAMES H. KAMINER

Sworn to and subscribed before me
this 8th day of Sept., 1961.

/s/ W. B. McDONALD
Notary Public, Georgia State at Large
My Commission Expires Feb. 18, 1962

[fol. 32]

EXHIBIT I TO BILL OF EXCEPTIONS

IN THE SUPERIOR COURT OF FULTON COUNTY

Case No. A 88617

S. J. CURRY AND COMPANY, a Partnership Composed of S. J. CURRY, C. D. McKNIGHT, JR., E. G. HIGHTOWER and J. E. TAPPAN

vs.

LOCAL UNION #438, CONSTRUCTION AND GENERAL LABORER'S UNION, AFL-CIO

STATEMENT OF WILLIAM OWEN THOMAS

STATE OF
COUNTY OF

I, WILLIAM OWEN THOMAS, being first duly sworn, do solemnly make oath as follows:

My name is William Owen Thomas. I am associated with Arthur Pew Construction Company, Inc. general contractors with offices in Chamblee, Georgia. Arthur Pew Construction Company, Inc. is engaged in construction of the Chattahoochee Water Treatment Plant between the dates of about the 25th day of November, 1957 and the 11th day of October, 1960 and throughout the period of said construction, the hourly rate paid to carpenters was as follows:

July 1, 1957	$2.95
July 1, 1958	3.05
July 1, 1959	3.20
January 1, 1959	3.10
January 1, 1960	3.25
July 1, 1960	3.35
July 1, 1961	3.45

The wages we have paid are the prevailing wages for this type of construction in this area.

The above statement is given for the purpose of being used as evidence in the above styled case.

/s/ William Owen Thomas

Sworn to and subscribed before me
this 8 day of Sept., 1961

/s/ Van A. Braud
Notary Public, Fulton County, Georgia

[fol. 33]

Exhibit J to Bill of Exceptions

In the Superior Court of Fulton County

Case No. A 88617

S. J. Curry and Company, a Partnership Composed of S. J. Curry, C. D. McKnight, Jr., E. G. Hightower and J. E. Tappan

vs.

Local Union #438, Construction and General Laborer's Union, AFL-CIO

Affidavit of Kenneth E. Goodwin

State of
County of

I, Kenneth E. Goodwin, being first duly sworn, do solemnly make oath as follows:

My name is Kenneth E. Goodwin. I am a superintendent of construction for Halpin, Inc., whose principal office is located in Toledo, Ohio.

Beginning about the first day of June 1960 and ending about the first day of June 1961, Halpin, Inc. was engaged in construction of a sewage disposal plant for the County of DeKalb, Georgia. During the entire period of said construction, Halpin, Inc. paid the following wages to its employees.

Craft	*Hourly Wage*
Carpenters	3.35
Cement Finishers	3.30
Operators	3.675
Oilers	2.575
Bricklayers	4.00
Laborers	2.00

The above statement is given for the purpose of being used as evidence in the above styled case.

/s/ KENNETH E. GOODWIN

Sworn to and subscribed before me
this the 5th day of Sept., 1961.

/s/ MARYON BARON
Notary Public, State of Florida at Large

My Commission Expires Feb. 22, 1963
Bonded by American Surety Co. of N. Y.

[fol. 34]

IN THE SUPERIOR COURT OF FULTON COUNTY, GEORGIA

JUDGE'S CERTIFICATE TO BILL OF EXCEPTIONS

GEORGIA,
FULTON COUNTY:

I do certify that the foregoing Bill of Exceptions, together with the affidavits attached thereto and made a part thereof and marked Exhibit A, B, C, D, E, F, G, H, I and J, are true and specifies all of the evidence, and specifies all of the record, material to a clear understanding of the error complained of; and the Clerk of the Superior Court of Fulton County is hereby ordered to make out a complete copy of such parts of the record in said case as are in this Bill of Exceptions specified and certify the same as such and cause the same to be transmitted to the Supreme Court of Georgia, that the errors alleged to have been committed may be considered and corrected.

This the 10th day of October, 1961.

Ralph H. Pharr, Judge, Fulton Superior Court.

Acknowledgment of service (omitted in printing).

[fol. 35] [File endorsement omitted]

[fol. 36] Clerk's certificate to bill of exceptions (omitted in printing).

[fol. 37] [File endorsement omitted]

[fol. 39]

IN THE SUPERIOR COURT OF FULTON COUNTY, GEORGIA

A-88617

PETITION—Filed August 24, 1961

To the Superior Court of Said State and County and the Honorable Claude D. Shaw, Judge Thereof:

The petition of S. J. Curry, C. D. McKnight, Jr., E. G. Hightower and J. E. Tappan, doing business as a partnership under the name and style of S. J. Curry & Company, respectfully shows:

1.

The defendant is Local No. 438 of the Construction and General Laborers Union—AFL CIO, an unincorporated association within the meaning of Title Three, Section 118, Code of Georgia Annotated, 1960 Supplement. The defendant maintains its principal office at 1014 Edgewood Avenue, N. E., Atlanta, Fulton County, Georgia, and is engaged in representing its members, conducting picketing and otherwise doing business in Fulton County, Georgia.

2.

The petitioners are engaged in the business of a general contractor within the State of Georgia and perform various kinds of construction work.

3.

This court has jurisdiction over the defendant.

4.

On November 15, 1960 the petitioners entered into a contract with the City of Atlanta for the construction of certain additions and improvements to the sewage disposal facilities located at the South River Sewage Treatment Plant in the City of Atlanta. This contract was let by the City of Atlanta under the specific contract title of "Construct Sewage Treatment Plant Improvements, South River Plant: Contract D." Under the terms of said contract the petitioners were to undertake the construction of designated improvements and additions to the existing sewage disposal plant as a general contractor and the petitioners agreed, [fol. 40] pursuant to the terms of the contract, to complete the same within 540 consecutive calendar days from the date of the notice to proceed, December 5, 1960.

5.

In undertaking the construction and completion of the improvements and additions contemplated under their contract, the petitioners have engaged the services of varying numbers of workers engaged in certain of the building and construction crafts, such as carpenters, iron workers, brick masons, cement finishers, common laborers and the like.

6.

Petitioners further show that in the construction and completion of the aforementioned facilities, they operate what is known in the trade as an "Open Shop" as required by the laws of the State of Georgia, hereinafter set forth, and to this extent petitioners permit workers engaged in said construction project to be employed thereon without any discrimination as to whether such workers are or are not members of a labor organization.

7.

While petitioners have been awarded the general contract for the construction work involved, the City of Atlanta has subcontracted directly with other contractors to complete the electrical and plumbing work connected with said proj-

ect. All electrical work connected with the construction project has been subcontracted by the City of Atlanta to C. L. Gerlach Electric Company, of Fulton County, Georgia, and all plumbing work has been subcontracted by the City of Atlanta to Gowdy & Durkin, Inc., of Fulton County, Georgia. Your petitioners have no control or supervision over the work of the aforementioned contractors as their contracts are directly with the City of Atlanta.

[fol. 41] 8.

On or about August 10, 1961 the defendant, acting by and through its business agent, W. M. Wilson, and other persons whose names are unknown to petitioners, caused a man or picket to appear in front of the construction project of petitioners at the South River Sewage Treatment Plant and have caused said picket to patrol or picket the main entrance to said construction project from August 10, 1961 through the present time. The aforementioned picket has been actively engaged in the picketing of petitioners' construction project by walking up and down in front of the main entrance to said construction site, which is located at the intersection of South River Industrial Boulevard and Forest Park Road, carrying a picket sign bearing the following legend:

"S. J. Curry & Co., Inc. violating contract with City of Atlanta by not paying wages conforming with those of a similar type of work in the Atlanta area.

CONSTRUCTION AND GENERAL LABORERS UNION
438 AFL CIO."

9.

As a direct result of the picketing or patrolling caused by the defendant through its agents, the employees of C. L. Gerlach Electric Company and Gowdy & Durkin, Inc. have walked off the construction site and have refused, and still refuse, to continue their work. In addition, the presence of the picket has created a conditon so that carriers and suppliers have been prevented from supplying or delivering materials to the construction site of petitioners because of

the refusal and failure of truck drivers to cross the aforementioned picket line.

10.

The refusal of other contractors' employees to work on the construction site in question coupled with the effective prevention of the delivery of materials and supplies as aforesaid, has placed petitioners in a position so that they are unable to satisfactorily complete and perform their con- [fol. 42] tract with the City of Atlanta, thus depriving petitioners from lawfully engaging or continuing to engage in the proper and lawful pursuit of their business; and, further, many of petitioners' own employees have been deprived of the right to work because of the work stoppage resulting from the aforementioned conditions.

11.

The placing of a picket in front of a construction site or job such as petitioners is a commonly accepted and established sign or signal used by construction craft unions to notify all union workers that a particular job has been declared "unfair" or placed "on strike" so that they will refuse to work on that particular construction job. The purpose of such picket line is to compel such union members working on the job to refrain from working, thereby bringing effective economic and coercive pressure upon petitioners and all of petitioners' employees who do not belong to such craft unions.

12.

As aforesaid, many of the employees employed by petitioners have no union affiliation, but because the work on this construction project is so integrated, many workers or employees who are willing to continue to perform their duties, notwithstanding the presence of the picket line, cannot proceed in an orderly manner unless the work performed by craft union workers and the delivery of materials and supplies also proceeds. Due to this integration of work, the picket line established by the defendant has resulted in a partial cessation of vital work on the improvements

that petitioners have contracted with the City of Atlanta to complete at the South River Sewage Treatment Plant, and if the picketing is allowed to continue, in a short time there will be almost a complete stoppage of work.

13.

Because of the facts hereinbefore set out, the petitioners are unable to proceed with and continue the work remaining to be done on said construction project and the peti- [fol. 43] tioners will thereby be unable to proceed with full performance of its contract with the City of Atlanta; and unless the aforementioned picketing and patrolling are immediately discontinued, your petitioners will be unable to complete the construction contemplated under their contract with the City of Atlanta within the 540 days allowed under the contract, and thereby invoking the penalty provisions of said contract.

14.

The petitioners have no dispute of any kind with any of their employees or with any labor organization representing their employees.

15.

The picketing described herein constitutes an unlawful interference with the employment of certain of petitioners' employees and also constitutes an unlawful interference with petitioners' business. By its above described conduct, the defendant is preventing and attempting to prevent the petitioners from lawfully engaging or continuing to engage in the proper, lawful and peaceful use and enjoyment of their property used in the conduct of their respective business and through its act the defendant is further actively interfering with the pursuit of lawful employment by certain of petitioners' employees.

16.

The defendant is conducting the said picketing in a manner calculated to interfere with petitioners' contract with

the City of Atlanta so as to make performance of this contract impossible and thereby the petitioners are suffering irreparable and incalculable injury and damage and your petitioners will continue to suffer irreparable damage so long as the unlawful picket line is allowed to be maintained by the defendant or any of its agents.

17.

Petitioners further show the court that the defendant is well aware that union members are under compulsion and coercion to refrain from crossing the picket line or working [fol. 44] on any site behind the picket line and further that the defendant is well aware that the establishment of the picket line in front of petitioners' job site would necessarily result in a serious disruption and eventual complete cessation of work.

18.

Petitioners further show the court that they are informed and believe, and so charge, that the conduct and acts of the defendant as herein set out are all a part of a concerted plan to bring economic and coercive pressure to bear upon petitioners so as to require petitioners to abandon the operation of an "open shop" on the aforementioned construction site and further to force petitioners into the unlawful status of requiring union membership as a condition of employment on said construction site, both of which are clear violations of the laws of this State as shall be hereinafter set forth.

19.

Petitioners have no adequate remedy at law.

20.

The aforementioned acts of the defendant are in direct violation of the following laws of the State of Georgia:

"Georgia Code (Ann. Supp.) Section 54-804,

Compelling persons to join, or refrain from joining, labor organization, or to strike or refrain from strik-

ing.—It shall be unlawful for any person acting alone or in concert with one or more other persons to compel or attempt to compel any person to join or refrain from joining any labor organization, or to strike or refrain from striking against his will by any threatened or actual interference with his person, immediate family, or physical property, or by any threatened or actual interference with the pursuit of lawful employment by such person, or by his immediate family."

[fol. 45] "Georgia Code (Ann. Supp.), Section 54-805,

Unlawful interference with employer's business.—It shall be unlawful for any person, acting alone or in concert with one or more other persons, by the use of force, intimidation, violence, or threats thereof, to prevent or attempt to prevent any employer from lawfully engaging or continuing to engage in any proper and lawful business activity, or from the proper, lawful or peaceable use or enjoyment of his property used or useful in the conduct of such business, or from acquiring materials or supplies for the purposes of such business, or from disposing of the goods, wares or products of such business, or to prevent or attempt to prevent any carrier or other person from supplying or delivering materials or supplies to any such employer, or from receiving or accepting delivery on the premises of such business of the goods, wares or products of such business."

"Georgia Code Section 66-9906. *Unlawfully preventing laborers, etc., from performing duties.*—

Any person or persons, who, by threats, violence, intimidation, or other unlawful means, shall prevent or attempt to prevent any person or persons from engaging in, remaining in, or performing the business, labor, or duties of any lawful employment occupation, shall be guilty of a misdemeanor."

21.

Petitioners further show the court that they have an absolute property right in the use and enjoyment of their prop-

erty, which includes the carrying on of their business activities related to the construction of the additions and improvements to the South River Sewage Treatment Plant and in using their materials and equipment in relation thereto, and that the defendant has and is effectively interfering with the enjoyment of this property right.

[fol. 46] 22.

Petitioners further show that the harassment and unlawful picketing conducted by the defendant has not only interfered with its own property right but, as aforesaid, it has interfered with the right to work guaranteed under the laws of this State to petitioners' employees who are innocent of any wrongdoing and desire to continue their employment without interruption but cannot do so due to the integrated nature of the construction business; and petitioners further show that the harassment and unlawful picketing as aforesaid will continue unless the defendant is temporarily and permanently enjoined from molesting the petitioners in the lawful pursuit of their business and from interfering with the employment rights of petitioners' employees.

23.

Petitioners emphatically aver that they are not engaged in any labor dispute with any of their own employees or with any labor organization representing their employees.

Wherefore, your petitioners pray as follows:

(a) That process issue directed to the defendant requiring it to be and appear before this court to answer this petition as required by law;

(b) That forthwith, and pending further hearing, and until further order of this court, the defendant and all persons acting in association or connection with the defendant be restrained and enjoined from picketing or causing the picketing of the construction job of the petitioners; and restrained from taking any action either directly or in-

directly which has the effect of causing work stoppage and disruption on, or interference with, petitioners' construction project in building the additions and improvements at the South River Sewage Treatment Plant; and restrained from coercing, hindering or obstructing petitioners' employees in carrying out their assigned duties on petitioners' [fol. 47] construction project; or from inducing or attempting to induce any employee to cease work or refrain from working on said construction job; and that after due hearing, the defendant and all of its officers, agents, members and servants be temporarily and permanently enjoined as aforesaid.

(c) That a rule nisi issue, directed to the defendant, to show cause before this court and Honorable Judge on a day certain why it should not be enjoined and restrained as herein prayed; and that pending a hearing on said rule nisi the defendant be temporarily restrained and enjoined as herein prayed;

(d) That the petitioners have such other and further relief as this court may deem proper.

Perry, Walters & Langstaff, By: Robert. B. Langstaff, Attorneys for Petitioners.

[fol. 48] *Duly sworn to by S. J. Curry, jurat omitted in printing.*

[fol. 49]

IN THE SUPERIOR COURT OF FULTON COUNTY, GEORGIA

ORDER TO SHOW CAUSE—August 24, 1961

The within and foregoing petition having been read and considered, It Is Ordered Filed. Let a copy of the same together with this order and process, be served upon the defendant as provided by law.

It Is Ordered that the defendant show cause before this Court on the 12 day of Sept., 1961 at 9:45 o'clock A. M., in the Fulton County Courthouse, why the prayers of this petition should not be granted and why it should not be enjoined as prayed.

This the 24 day of August, 1961.

Claude D. Shaw, Judge, Superior Court, Fulton County.

[fol. 50]

IN THE SUPERIOR COURT OF FULTON COUNTY, GEORGIA

STATE OF GEORGIA,
COUNTY OF FULTON,

Complaint A-88617

S. J. CURRY, C. D. McKNIGHT, JR., E. G. HIGHTOWER, and J. E. TAPPAN, d/b/a S. J. CURRY & COMPANY,

versus

LOCAL NO. 438 of the CONSTRUCTION AND GENERAL LABORERS UNION—AFL CIO

SUMMONS—August 24, 1961

To the Sheriff or His Deputy, of said County, Greeting:

The Defendant herein is hereby required, personally or by attorney, to be and appear at the Superior Court, to be held in and for said County within 30 days from the date of service of the within petition, upon each Defendant, as shown by entry of serving officer set forth below, then and there to answer in writing the Plaintiff's Complaint, as in default thereof said court will proceed, as to justice shall appertain.

Witness, the Honorable Virlyn B. Moore, Judge of said Court,

This 24th day of August, 1961.

Ruby H. Ward, Deputy Clerk.

Filed in Office this the 24th day of August 1961.

Ruby H. Ward, Deputy Clerk.

[fol. 51]

IN THE SUPERIOR COURT OF FULTON COUNTY, GEORGIA

ORDER DENYING INTERLOCUTORY INJUNCTION
—September 12, 1961

This cause came on this day to be heard upon the pleadings in the cause, affidavits, oral testimony and argument of counsel from all of which it appearing that the applications for temporary Interlocutory Injunction should be denied and is so denied.

This Sept. 12, 1961.

Ralph H. Pharr, Judge, Superior Court, Atlanta Judicial Circuit

[fol. 52] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 53]

IN THE SUPREME COURT OF GEORGIA

Case No. 21463

CURRY et al.

v.

CONSTRUCTION & GENERAL LABORERS UNION LOCAL NO. 438, AFL-CIO.

OPINION—Decided January 4, 1962

By the Court:

While the picketing in the present case was peaceful, it was for an unlawful purpose, and should have been restrained and enjoined.

HEAD, Presiding Justice. S. J. Curry and others, doing business as a partnership under the name of S. J. Curry & Company, brought a petition for injunction against Local

No. 438, of the Construction and General Laborers Union —AFL CIO. The trial judge refused to grant the interlocutory injunction, and the exception is to this order.

On November 15, 1960, the petitioners entered into a contract with the City of Atlanta for the construction of certain improvements to sewage disposal facilities of the city. The contract has a limitation of 540 days from December 5, 1960, with a penalty provision for each day beyond the limit in which the work is not completed. The petitioners operate on what is known as an "open shop" basis, that is, they employ workmen without regard to whether or not they are members of a labor organization. The petitioners were awarded only the general contract for the construction work. The city subcontracted directly with [fol. 54] other contractors for the electrical and plumbing work connected with the project, and the petitioners have no supervision over the work of these contractors. Shortly after the petitioners started on their construction work, they were visited by representatives of various local labor unions in the Atlanta area, and a conference was arranged on February 14, 1961. The representatives of the labor unions requested that the petitioners use union workmen on the job. S. J. Curry, in his affidavit, stated that, when he told the union representatives present that the petitioners would not use union members exclusively, since they operate on an "open shop" basis, he was told by Mr. Moore (a representative of the Building Trades Council of Atlanta) and "other representatives of the unions" that "they would use every means at their command to see that we did use union workmen on our project." On August 10, 1961, a picket was placed by the defendant at the main entrance of the construction site of the petitioners, carrying a placard with the following legend: S. J. Curry & Company, Inc. violating contract with City of Atlanta by not paying wages conforming with those of a similar type of work in the Atlanta area. CONSTRUCTION AND GENERAL LABORERS UNION 438 AFL CIO." The picket has patrolled the construction site since that time, and because of the picket, the employees of the electrical and plumbing contractors have refused to continue their work, and carriers and suppliers have refused to deliver material and sup-

plies. This has resulted in a partial cessation of the work, since the construction can not proceed without electrical and plumbing work and the delivery of essential supplies. The consequence of the partial cessation of work has been the discharge of all but 37 of the 72 men working on the job at the time the picket was established.

[fol. 55] The contract of the petitioners with the city contains the following language: "Wages will conform with those being paid on similar types of work in the Atlanta area." The evidence introduced for the defendant showed that the petitioners were not paying their employees the wage scale of specified construction contractors in the Atlanta area. James Moore, in his affidavit, stated that he had attempted to persuade the petitioners to comply with their contract with the city in regard to the payment of wages, and had conferred with officials of the city in an effort to have them require the petitioners to comply with their contract, but had been unsuccessful in both attempts.

"Peaceful picketing is not unlawful, unless it is for an illegal purpose. On the contrary, it is authorized under the constitutional guarantee of free speech." Cook v. Huckaboo Transport Corp., 215 Ga. 9, 13 (109 SE2d 740). The picketing in the present case was peaceful. The trial judge was authorized to find from the evidence that the petitioners were not paying wages conforming with those paid on similar types of work in the Atlanta area. It is asserted by the defendant that it has a right to use the method of picketing to inform the public of the petitioners' failure to abide by the terms of their contract with the City of Atlanta, that it is a matter of legitimate concern to the defendant that the wages paid by the petitioners are lower than those paid on similar types of work in the area, since contracts are ordinarily let on competitive bids and a company paying lower wages can underbid contractors paying union wages.

It is asserted in the petition, and shown by undisputed evidence of the petitioners that the establishment of a picket by a labor union (whatever placard the picket may [fol. 56] carry) is a signal to all members of the labor unions to refuse to work on the job, or to furnish supplies for it, and this fact was known to the defendant. The peti-

tioners have no labor dispute with their employees, and the defendant is not representing employees of the petitioner. The defendant has chosen to use a method of imparting information to the public which it knew would have the effect of paralyzing the petitioners' operations, preventing them from completing their contract within the time limit provided by its terms, and forcing them to discharge a number of their employees.

The facts of the present case are similar to those in Powers v. Courson, 213 Ga. 20 (1) (96 SE2d 577), in which it was held: "The decision of this court in Woodard v. Collier, 210 Ga. 239 (78 SE2d 526), is controlling in the instant case. Here, as in that case, the evidence demands a finding that the picket was placed on the job for the purpose of forcing Powers to employ only union labor, or be unable to comply with the terms of his contract because of the refusal of the members of other unions employed in the work to cross the picket line, and thereby slow the project to a virtual standstill. As held in that case, such picketing is for an unlawful purpose, and clearly a violation of the provisions of Code Ann. Supp. § 54-804, and Code § 66-9906. See also Local Union No. 10, United Association of Journeymen Plumbers & Steamfitters v. Graham, 345 U. S. 192 (73 Sup. Ct. 585, 97 L. ed. 946); Ellis v. Parks, 212 Ga. 540 (93 SE2d 708)."[3]

The trial judge erred in refusing the interlocutory injunction.

Judgment reversed. All the Justices concur.

[fol. 57] 21463

IN THE SUPREME COURT OF GEORGIA

ATLANTA

S. J. CURRY et al.

v.

CONSTRUCTION & GENERAL LABORERS UNION
LOCAL NO. 438, AFL-CIO

JUDGMENT—January 4, 1962

This case came before this court upon a writ of error from the Superior Court of Fulton County; and, after argument had, it is considered and adjudged that the judgment of the court below be reversed because the court erred in refusing the interlocutory injunction. All the Justices concur.

Bill of Costs, $15.00

SUPREME COURT OF THE STATE OF GEORGIA
CLERK'S OFFICE, ATLANTA

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia, and that

paid the above bill of costs.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Clerk

[fol. 58] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 59]

SUPREME COURT OF THE UNITED STATES

No. 839, October Term, 1961

LOCAL NO. 438, CONSTRUCTION & GENERAL LABORERS' UNION, AFL-CIO, Petitioner,

vs.

S. J. CURRY et al., etc.

ORDER ALLOWING CERTIORARI—May 21, 1962

The petition herein for a writ of certiorari to the Supreme Court of the State of Georgia is granted limited to the question of whether the Supreme Court erred as stated in Questions (d), (h) and (i) of the petition which read as follows:

"(d) In holding that it was illegal for the Petitioner to carry a placard in front of the Construction job containing the statement 'S. J. Curry & Company, Inc., violating contract with City of Atlanta by not paying wages conforming with those of a similar type of work in the Atlanta area: Construction & General Laborers' Union 438, AFL-CIO'. The Court so held, notwithstanding the fact that the Court found that the legend carried upon said sign was true and that S. J. Curry & Company was not paying the prevailing wage in the area even though it had executed a contract with the City of Atlanta for said construction which contract contained the provision: 'Wages will conform with those being paid on similar types of work in the Atlanta area'.

"(h) In granting said injunction, said court deprived Petitioner in Certiorari of rights protected by the National [fol. 60] Labor Relations Act, Title 29, Section 157 of the United States Code Annotated.

"(i) In granting said injunction said court assumes jurisdiction of a cause, the subject matter of which had

been pre-empted by enactment of the National Labor Relations Act, Title 29, Section 157-158(b) of the United States Code Annotated."

Counsel are requested also to brief and argue the question of the Court's jurisdiction to review the judgment of the Supreme Court of Georgia under 28 U.S.C. § 1257; see Montgomery Building & Construction Trades Council v. Redbetter Erection Company, 344 U.S. 178.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Frankfurter took no part in the consideration or decision of this application.